

IPOLA GUIDELINE

Applying the legislation – Right to Information Act 2009

Providing access to documents

This guide does not reflect the current law.

It highlights important changes to the *Right to Information Act 2009*.

This guide does not constitute legal advice and is general in nature only. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

1.0 Overview

This guideline explains how to give an applicant access to documents under the *Right to Information Act 2009* (Qld) (**RTI Act**), including the impact of third party copyright and when an agency can turn electronic information into a written document.

2.0 When can an agency give access?

2.1 Giving access at the completion of a matter

An applicant has 40 business days to access the documents, unless the agency¹ agrees to extend this time.² The 40 business days starts the business day after:

- a decision of the agency³ (or, if relevant, the decision on external review or appeal)
- informal resolution of an external review⁴ or appeal; or
- a notice by the agency that a deferred access period⁵ has expired.

Before the applicant can be given access to the documents, they must pay any outstanding processing and/or access charges.⁶

¹ In this guideline, references to an agency include a Minister unless otherwise specified.

² Section 69 of the RTI Act.

³ Including an initial decision and/or internal review decision.

⁴ For informal resolution of an external review, the 40 business days starts the business day after the notice under section 90(4) of the RTI Act is given.

⁵ Under section 37(3)(d) or 72(2) of the RTI Act – see section 69(2) of the RTI Act.

⁶ Section 60(1) of the RTI Act.

An agency can send the documents with the decision notice if there are no fees or charges owing and there is no deferred access period yet to expire.

If the documents are not being sent with the decision notice, the agency must tell the applicant the period within which the applicant may access them⁷ and explain how to do so. If access is deferred to any documents, that must be explained in the decision notice.

Once the applicant seeks access, the agency should give them the documents as soon as possible.⁸

Access by download link

If access to the document is being given by way of download from a weblink (usually emailed to the applicant) the link must be active for at least 40 business days (or the relevant access period). If the link expires before the end of the access period then a new active link must be sent to the applicant (unless they advise they have accessed the documents).

If the applicant does not access the documents within the access period, their right of access expires, although the agency does have the discretion to extend this timeframe.⁹

2.2 Giving access during an external review

If an agency agrees to give access to a document, or part of a document, to a participant in an external review, the agency is authorised to give that access, and the external review continues as if the review did not apply in relation to the document or part.¹⁰

3.0 How can an agency give access?

Under the RTI Act, access to documents may be given in the way the applicant requests¹¹, unless it would:

- interfere unreasonably with the operations of the agency¹²
- be detrimental to the document or, due to its physical nature, be inappropriate;¹³ or
- involve copyright infringement of someone other than the State (refer to the discussion below).

⁷ Section 54(2)(ii) of the RTI Act.

⁸ The RTI Act does not provide a specific timeframe for an agency to give access to documents. Section 38(4) of the *Acts Interpretation Act 1954* (Qld) provides that 'if no time is provided or allowed for doing anything, then the thing is to be done as soon as possible'.

⁹ Section 69(2)(a)(ii) and (b)(ii) of the RTI Act.

¹⁰ Section 94A of the RTI Act.

¹¹ Section 68 of the RTI Act.

¹² Or functions of the Minister.

¹³ If a document is more than 25 years old or in the custody of the Queensland State Archives, the State Archivist may direct that access not be given in one or more, but not all, of the forms mentioned in section 68(1) of the RTI Act if, in the State Archivist's opinion, giving access in that form would be detrimental to the document's preservation or, having regard to the physical nature of the document, would be inappropriate – see section 68(7) of the RTI Act.

The RTI Act includes a non-exhaustive list¹⁴ of ways access can be given, including:

- inspection
- copies
- viewing or hearing images or sounds
- transcriptions of sound recordings, shorthand writing or code; and
- creating a written document out of electronic information, such as a database.

An agency may give access to a document in another form agreed to by the applicant.¹⁵

4.0 Deleting irrelevant, exempt and contrary to the public interest information

For information in a document that is irrelevant to an application, an agency may delete this information from a copy of the document before giving the applicant access, but only if the agency considers that it is reasonably practicable to do so.¹⁶

See ***Deletion of irrelevant information*** (guideline under development) for further information.

Where an agency decides to refuse access to exempt information, contrary to the public interest information, contrary to child's best interests information, or relevant healthcare information, the agency must delete this information from a copy of the document before the applicant is given access.¹⁷

Note

Never remove information from original documents. Copies must always be made of the original documents and the information removed from the copies.

5.0 Creating written documents and transcripts

Note

These documents are not post-application documents¹⁸ because their creation is specifically authorised by the RTI Act.

5.1 ***Written documents from electronic information***

Where information only exists electronically, such as in a database, an agency can create a written document from the electronic information to give access to

¹⁴ Section 68(1) of the RTI Act.

¹⁵ Section 68(8) of the RTI Act.

¹⁶ Section 73 of the RTI Act.

¹⁷ Sections 74-75B of the RTI Act.

¹⁸ Section 27 of the RTI Act.

it.¹⁹ The agency can only use tools which are usually available to it to create the written document.

Generally, the agency should only create a written document out of information which is in scope of the application. Methods of creating the written document will depend on the tools available to the agency but could include exporting to a spreadsheet or taking a screen capture.

5.2 Transcription of sounds, shorthand, or code

Where an agency has documents where words are recorded in the form of shorthand, code, or sound, the agency can produce a written transcript of the words to give access.²⁰

6.0 Access to copies

Applicants can be given access to electronic copies (e.g., PDFs of documents provided by email, CD, USB or downloadable from a weblink) or hardcopies. Hardcopies may be given in the form of, for example, printouts, photocopies, large scale maps, building plans, or x-rays.

7.0 Access by inspection

Applicants can choose access by inspection or inspection may be the only form of access available, for example, where the document is subject to third party copyright. Documents must be redacted to remove exempt, irrelevant, or contrary to the public interest information before the applicant inspects them.

An applicant must be given a 'reasonable opportunity' to inspect the documents. What is reasonable will depend on the circumstances. An agency should consider the applicant's access to transport and any difficulties involved in travelling to the agency. It may be appropriate to send the documents to a branch of the agency closer to the applicant to facilitate inspection.

A 'reasonable opportunity' may also mean allowing the applicant to inspect the documents over several days, particularly if there are a large number of documents.

Depending on the contents of the documents, agencies may wish to consider supervising applicants during inspection.

7.1 Viewing images and hearing sounds

If a document is an audio or video document²¹, such as a phone recording or CCTV, the agency can arrange for the applicant to hear or view it, with any irrelevant, exempt, or contrary to the public interest information removed.

¹⁹ Section 68(1)(e) of the RTI Act

²⁰ Section 68(1)(d) of the RTI Act.

²¹ A document that consists of an article or material from which sounds or visual images can be reproduced.

If the agency does not have the appropriate equipment to facilitate the access, it will have to borrow or hire it.²²

Redacting video and audio recordings

See [Managing access to digital video recordings](#) for more information about removing exempt or contrary to the public interest information from, and providing access to, digital and audio recordings.

8.0 Methods of redaction

8.1 Electronic deletion from written documents

Most agencies use software such as Redax, a plug-in for Adobe Acrobat, or similar programs, which enable users to:

- delete information from scanned electronic documents
- make a notation about why information was deleted
- number each page
- insert watermarks such as 'released under RTI'; and
- save the document as a copy of the original with material deleted.

Electronic copies can then be provided to the applicant in PDF format. However, it is important to ensure that extra steps are taken to prevent the document being altered or manipulated. For example, PDF documents can be password protected in Adobe Acrobat to prevent them from being altered.

8.2 Redacting hardcopies

While redaction is primarily done through electronic means, if an agency needs to redact information from a hardcopy document, it is important the redaction is made to a *copy* of the original document. The redaction should be made with a method that completely obscures the information. The final copy must be carefully checked to ensure the information has been entirely removed.

9.0 Notation of reasons for removal

When information is deleted from documents, a notation should be made to identify the section under which it was removed. For example, the copies could be marked: '*deleted: exempt information under section 48 RTI Act*' or '*deleted: contrary to the public interest under section 49 RTI Act*' as appropriate.

10.0 Watermarks

It is recommended that documents released under the RTI Act be watermarked to indicate this. Agencies using Redax or similar software can insert the watermark across the electronic files. Where the document is not a written

²² The reasonable costs incurred in making such an arrangement can be passed on to the applicant as an access charge, but it cannot exceed the amount the agency actually spends. Please see OIC's guideline on ['Fees and charges'](#).

document, for example a CD or x-ray, the access copy can still be labelled or otherwise marked to indicate RTI release.

11.0 Copyright

The RTI Act provides that if giving access in the form requested by the applicant (e.g., copies) would breach the copyright of someone other than the State of Queensland, the agency can refuse that form of access and give access in a different, non-infringing form.²³ It is not the role of RTI decision makers to interpret contractual arrangements and make complex determinations regarding copyright, but because copyright can impact the available forms of access, they need to be aware of copyright and make relevant inquiries as needed.

Determining if copyright applies to some or all of the documents²⁴ requires a consideration of whether copyright subsists in the documents and, if so, whether it would be infringed by the agency making copies for release under the RTI Act. In Australia, copyright is governed by the *Copyright Act 1968* (Cth). The Commissioner discussed the application of this Act to providing access under the RTI Act in *V11 and Brisbane City Council*²⁵ and *Mt Cooth-tha Local Residents and Brisbane City Council*.²⁶ Decision makers should refer to those decisions for guidance on determining if documents are subject to copyright.

If a decision maker decides to give access by way of inspection because providing copies would infringe copyright, they should ensure appropriate conditions are in place during inspection, for example, by ensuring there is adequate supervision, to prevent copying or reproduction of the copyright document.²⁷

For additional IPOLA assistance, please contact the IPOLA team by email IPOLA.Project@oic.qld.gov.au

For information and assistance on current legislation, please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or by email enquiries@oic.qld.gov.au

Published October 2024 and Last Updated 15 October 2024

²³ Section 68(4)(c) of the RTI Act.

²⁴ *Higgins and Education Queensland* (Unreported, Queensland Information Commissioner, 31 March 1999) at [34].

²⁵ [2021] QICmr 39 (6 August 2021) at [17]-[50].

²⁶ [2021] QICmr 49 (27 September 2021) at [26]-[76].

²⁷ *Helping Hands Pty Ltd and Department of Education, Training and Employment* (Unreported, Queensland Information Commissioner, 30 October 2012) at [88].